



MEMO ENDORSED

MICHAEL A. CARDOZO  
Corporation Counsel

THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, N.Y. 10007

ROBYN N. PULLIO  
Assistant Corporation Counsel  
Special Federal Litigation Division  
Tel.: (212) 788-1090  
Fax: (212) 788-9776  
Email: rpulho@law.nyc.gov

September 5, 2008

**BY FAX**

Honorable Laura T. Swain  
United States District Court Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007  
Fax: (212) 805-0426

*This action was referred to me  
for general pretrial purposes. Accordingly,  
the application to extend the discovery  
schedule is properly before me. Both  
applications are granted. The settlement  
conf. is adjourned to 11/13/08 at 2pm.  
Follows, USDC, 9/8/08*

**BY FAX**

Honorable Frank Maas  
United States District Court Magistrate Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007  
Fax: (212) 805-6724

Re: Marlon Baynes v. The City of New York, et al., 07 CV 11185 (LTS)(FM)

Dear Judge Swain and Magistrate Judge Maas:

I am the Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel for the City of New York, assigned to the above-referenced case on behalf of defendant the City of New York. I am writing with the consent of plaintiff's counsel, Rose M. Weber, Esq., to respectfully request: (1) that the settlement conference scheduled before Magistrate Judge Maas in this matter, which is currently scheduled for September 11, 2008, at 2:00 p.m., be rescheduled to a later date deemed appropriate by this Court, and (2) that Judge Swain grant the parties a commensurate two month enlargement of the discovery deadline from November 3, 2008, to January 5, 2009. This is the parties' third request for an adjournment of the settlement conference<sup>1</sup> and first request for an enlargement of time in this action.

<sup>1</sup> The first adjournment of the settlement conference was requested and granted due to the premature stage of discovery and because I was scheduled to be on trial at that time. The second adjournment of the settlement conference was requested and granted because the parties did not believe discovery had progressed to a point where the settlement conference would be productive and to give plaintiff further time to amend the complaint in this matter.

As background, the complaint in this matter alleges, *inter alia*, that plaintiff Marlon Baynes was subjected to false arrest, an unlawful strip search, excessive force, and malicious prosecution stemming from an incident that took place in Manhattan on or about September 1, 2005.

We are seeking to adjourn the settlement conference because I will be engaged in trial preparation and participating as trial counsel before Judge Charles P. Sifton in the Eastern District of New York in the case of Harwinder Vilku v. City of New York, et. al., 06 CV 2095 (CPS)(JO), which is scheduled to commence on September 15, 2008. The parties have estimated that the Vilku trial will last between four (4) to seven (7) days. As a result, I will be unavailable to participate in discovery or the currently scheduled settlement conference in this matter during the weeks of September 8, 2008, September 15, 2008, and potentially part of the week of September 22, 2008. In view of the foregoing, the parties respectfully request that the court grant an adjournment of the settlement conference in this matter, which is currently scheduled for September 11, 2008, at 2:00 p.m., to a later date convenient to the court after the Vilku trial has concluded.<sup>2</sup>

Discovery is currently scheduled to close in this matter on November 3, 2008. An enlargement of discovery is necessary for a number of reasons. First of all, this office only recently received all of plaintiff's medical documentation which was necessary for a full assessment of this case. Secondly, due to the fact that this incident occurred three years ago, it has taken more time than expected to obtain discovery and, consequently, for plaintiff to obtain the information necessary to amend the complaint in this matter. Therefore, although there have been preliminary settlement discussions between the parties, there is currently no resolution to this matter. To date, no depositions have been taken, as the parties are hopeful that this matter will be resolved prior to incurring the further litigation cost of depositions. Before proceeding to depositions, the parties would like to have the opportunity to engage in a settlement conference. However, for the aforementioned reasons, I will be unable to attend the currently scheduled settlement conference on September 11, 2008. If no resolution is reached after the settlement conference, both parties will proceed to depositions in this matter. Defendants estimate taking approximately two depositions in this matter, and plaintiff intends to depose at least the four individually named defendant police officers in this matter. Lastly, Ms. Weber is anticipating that she will be on trial before Judge Cathy Seibel in the Southern District of New York in the case of Kenneth Fober v. City of Yonkers, et. al., 06 CV 2653 (CS), beginning in early December, 2008. As a result, she will be unavailable to participate in discovery in this matter during that time. Therefore, an enlargement of discovery will allow time for the parties to participate in a settlement conference in this case, and, if the conference is unsuccessful, to then schedule and conduct depositions.

Accordingly, for the reasons set forth herein, defendants respectfully request: (1) that the settlement conference scheduled before Magistrate Judge Maas in this matter, which is currently scheduled for September 11, 2008, at 2:00 p.m., be rescheduled to a later date deemed appropriate by this Court, and (2) that Judge Swain grant the parties a commensurate two month enlargement of the discovery deadline from November 3, 2008, to January 5, 2009. Thank you for your consideration in this regard.

Thank you for your consideration in this regard.

---

<sup>2</sup> The parties have consulted regarding alternate conference dates and are both available at the following times: October 10, 2008, in the afternoon; October 15, 2008, in the morning; October 16, 2008, 3:00 p.m. or thereafter; October 17, 2008, in the morning; October 21, 2008, all day; or October 23, 2008, in the morning.

Respectfully submitted,



Robyn N. Pullio (RP 7777)  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: **BY FAX**

Rose M. Weber, Esq.  
Attorney for Plaintiff  
225 Broadway, Suite 1608  
New York, New York 10007  
Fax: (212) 233-5633